

REMARKS

Posture

In a first Office action of July 11, 2006, Examiner required restriction to one of two groups of claims. In Response to Restriction Requirement of August 6, 2006, Applicant elected to prosecute the claims in Group I, claims 1-18 and 30-32, with no transversal. In a telephone interview on August 7, 2006, Examiner Dwivedi indicated he intended to group claim 29 with the claims in Group II.

In a second, non-final Office action of August 22, 2006, Examiner rejected claims 17-18 under 35 U.S.C. 101, claims 1-2, 6-18 and 30 under 35 U.S.C. 102(b) as being anticipated by Vermeulen (U.S. PG PUB 200110042171), claims 3-4 under 35 U.S.C. 103(a) as being unpatentable over Vermeulen as applied to claims 1-2, 6-18, and 30 and in view of Carpentier et al. (U.S. PG PUB 200410068652), and claim 5 under 35 U.S.C. 103(a) as being unpatentable over Vermeulen as applied to claims 1-2, 6-18, and 30, and in view of Carpentier as applied to claims 3-4, and further in view of Sekiguchi et al. (U.S. Patent 6,434,553), claim 31 under 35 U.S.C. 103(a) as being unpatentable over Vermeulen as applied to claims 1-2, 6-18, and 30 and in view of Alshab et al. (U.S. PG PUB 200510138081), and claim 32 under 35 U.S.C. 103(a) as being unpatentable over Vermeulen as applied to claims 1-2, 6-18, and 30 and in view of Margolus et al. (U.S. PG PUB 200210038296). In Reply A of November 22, 2006, Applicant canceled claims 3, 4, 8-18 and 31-32, amended claims 1, 5, 6, and 30-32, and added new claims 33-43 to overcome the rejections.

In a third, final Office action of April 6, 2007, Examiner objected to the specification and to claims 5 and 33, rejected claims 1-2, 5-7 and 33-43 under 35 U.S.C. 101, rejected claims 1-2, 5-7, and 33-35 under 35 U.S.C. 103(a) as being unpatentable over Vermeulen in view of Fanning (U.S. Patent 6,742,023), and rejected claims 36-43 under 35 U.S.C. 103(a) as being unpatentable over Vermeulen in view of Rodriguez (U.S. PG PUB 200510090283). In an amendment accompanying a Request for Continued Examination of August 6, 2007, Applicant responsively amended the specification, canceled claims 5, 8, 38 and 42, amended claims 1, 6, 33, 36 and 40 and traversed claims 2, 7, 35, 37, 39, 41, and 43 to overcome the rejections.

A fourth, non-final Office action of September 20, 2007, indicated that the objections raised in the Office action of April 6, 2007, had been overcome by the applicant's amendments of August 6, 2007. However, independent claims 1, 6, 36, and 40, and their dependent claims, were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 33, 39 and 43 were also rejected under 35 U.S.C. 112, second paragraph, due to incorrect claim dependency numbering. Claims 1-2, 6-7, 33, and 35 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. PG PUB 2001/0042171 ("Vermeulen") in view of U.S. Patent 6,742,023 ("Fanning"), and further in view of U.S. PG PUB 200410172476 ("Chapweske"). Claims 36-37, 39-41, and 43 were rejected under 35 U.S.C. 103(a) as being unpatentable over Vermeulen in view of U.S. PG PUB 2005/0090283 ("Rodriquez"), and further in view of Chapweske.

Present Office Action

The present Office action of February 7, 2008, indicates that the previous rejections under 35 USC 112 have been overcome by Applicant's amendments received December 20, 2007. However, the rejections under 35 U.S.C. 103(a) are maintained.

Applicant maintains that the arguments previously presented in Applicant's reply of December 20, 2007, are correct. In addition, Applicant herein submits the following arguments to clarify and extend those previous arguments. In addition, Applicant herein further amends claims 1 and 6 to still further distinguish them, and cancels all remaining claims except dependent claims 2 and 7. Applicant submits that at least claims 1 and 6 and their respective dependent claims are patentably distinct for at least those reasons.

More specifically, Applicant herein amends claim 1 to incorporate the limitations of previous claim 33 and amends claim 6 to incorporate the limitations of previous claim 35. Applicant also herein amends claim 1 to recite an additional limitation, according to which "it is unknown at the time of the initiating whether bits of the require first resource will be delivered faster from the bandwidth-sensitive connection or from the at least one data processing system" and "the reaching of the indicated size indicates that all bits of

the required first resource have been retrieved" and "respective sizes of the portions of the bit sequence from the bandwidth-sensitive connection and from said at least one data processing system are not determined prior to all bits of the required first resource being retrieved." Claim 6 is amended in similar fashion.

No new matter is included in the amended claims, since the original application provides support. In particular, the original application teaches a problem wherein it is uncertain which of two sources will supply data faster. Original application, as published, paragraph 0066 ("The requestor . . . accepts whichever of the two copies of the resource is fully received first."). And the original application states that this problem is addressed by retrieving a resource from two sources in reverse bit sequence from opposite ends of the resource, where it is known that all of the bits of the resource have been received "when the total number of bits received from the two sources equals the indicated bit size of the resource." Original application, as published, paragraph 0071. This clearly indicates the retrieving is done without predetermining how much of the resource will come from which source.

Claims 1 and 6 are patentably distinct as previously submitted and are all the more certainly patentably distinct as herein amended.

Applicant previously argued, on pages 12-13 of the reply of December 20, 2007, that "If Chapweske was teaching that retrieval is initiated for an entire file from one source and retrieval is also initiated from the same entire file from another source, but in reverse bit sequence order, then why would Chapweske need terminology to facilitate assigning the last "N-" set of bytes to a new source?" The present Office Action characterizes this as a hypothetical question and, therefore, not a matter of concern in the examination process. Applicant regrets that the question was taken in this manner.

To state the issue in a more direct, declarative manner, Applicant's intention was to point out that Chapweske, paragraph 0085, explicitly teaches assigning the last "N-" set of bytes in a file to a new source, and that this is inconsistent with the position in the Office Action, which construes Chapweske as teaching or suggesting that retrieval is initiated for an entire file from one source and retrieval is also initiated from the same

entire file from another source, but in reverse bit sequence order, as recited previously in the claims of the present application. See, e.g., previous claim 1 ("initiating retrieval of the required first resource via said bandwidth-sensitive connection in parallel with initiating retrieval of the required first resource from said at least one data processing system, wherein the required first resource has bits arranged in a sequence, and the . . . initiating retrieval . . . comprises: initiating retrieval of the bit sequence of said required first resource in a reverse order relative to the retrieval of said required first resource via the bandwidth-sensitive connection; and wherein the method includes: combining portions of the bit sequence of said required first resource received via the bandwidth-sensitive connection and received from said at least one data processing system to build the bit sequence of said required first resource"). Claim 6 had similar language.

That is, what Chapweske *clearly does* explicitly teach (assigning the last "N-" set of bytes in a file to a new source) indicates Chapweske does *not even suggest* what is claimed in the present case, because in order to retrieve in the fashion claimed, Chapweske would not assign the last "N-" set of bytes to one of the sources. As a matter of fact, it is counterproductive to assign a fixed number of bytes to one of two sources for data retrieval if confronted with a problem wherein it is unknown which of the two sources will supply data faster. This problem is addressed, as taught in the present application and not Chapweske, by retrieving a resource from the two sources in reverse bit sequence from opposite ends of the resource, without predetermining how much of the resource will come from which source.

In order to even more clearly point out this distinction, the present reply amends claim 1 to recite "it is unknown at the time of the initiating whether bits of the required first resource will be delivered faster from the bandwidth-sensitive connection or from the at least one data processing system" and "the reaching of the indicated size indicates that all bits of the required first resource have been retrieved, and wherein respective sizes of the portions of the bit sequence from the bandwidth-sensitive connection and from said at least one data processing system are not determined prior to all bits of the required first resource being retrieved." Claim 6 is similarly amended. Applicant submits that neither Chapweske, nor Chapweske in combination with the

other references relied upon for the rejections, teaches or suggests this. For this reason, claims 1 and 6 are patentably distinct.

Claims 2 and 7

Claims 2 and 7 are allowable at least because they depend upon respectively allowable independent claims.

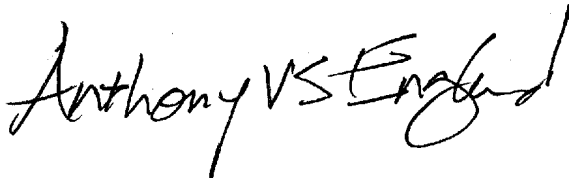
Disclaimer

Applicant has herein amended claims 1 and 6 and canceled claims 33, 35-41 and 43 from further consideration in this application. Applicant is not conceding in this application that those claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are only for facilitating expeditious prosecution of the allowable subject matter noted by the examiner. Applicant respectfully reserves the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

REQUESTED ACTION

Applicant submits that the claims as presented herein are patentably distinct, and hereby requests that Examiner grant allowance and prompt passage of the application to issuance.

Respectfully submitted,



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